IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

CRL.A.No. 230 of 2000(B)

SC.15/1999 of I ADDL. SESSIONS COURT, KOLLAM
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APPELLANTS: ACCUSED 1,3 &4
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1. **NIZAM, S/O.SYAID MUHAMMED,**
   POLAYATHODU VAYALITHOPPIL,
   VADAKKEVILA CHERRY AND VILLAGE,
   KOLLAM DISTRICT.

2. **RAJU @ GEORGE, S/O.NESAYYAN NADAR,**
   ATTUKAL PUTHUVALIL, MUNDACKAL EAST,
   WARD, KOLLAM DISTRICT.

3. **REGUTHAMAN @ REGHU, S/O. DAMODARAN,**
   VADAYAN CANAL VEEDU,
   NEAR KOTTAMALA JUNCTION,
   MUNDACKAL EAST WARD, KOLAM

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT:

STATE OF KERALA,
REP.BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA,
(CASE CHARGE SHEETED BY THE DETECTIVE
INSPECTOR, C.B.C.I.D.
(CFS) THIRUVANANTHAPURAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON 27/07/2007 DELIVERED THE FOLLOWING:

CRL.A. 230/2000

ORDER ON CRL.MP. NO.1652/2000 IN CRL.A. NO.230/2000

DISMISSED

27.07.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

CRL.A.NO. 230 OF 2000

DATED THIS THE 27th July 2007

JUDGMENT

The revision petitioners 3 in number who are Accused 1,3 and 4 in S.C.No. 15/99 in the file of the Sessions Court, Kollam stand convicted for the offences under Sections 489 B & 489 C read with Section 34 I.P.C.and accused Nos.1 and 4/appellants 1 and 3 sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.25,000/- each under Section 489 B read with Section 34 I.P.C.and in default to undergo simple imprisonment for six months each. A3/2nd appellant is sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.15,000/- for the offence under Section 489 B read with Section 34 I.P.C.and in default to undergo imprisonment for six months. A1, A3 and A4/appellants are to undergo rigorous imprisonment for three years and to pay a fine of Rs.5000/- each for the offence under Section 489 read with Section 34 I.P.C.and in default of payment of fine to undergo imprisonment for six months each. The 2nd accused was acquitted.

2. The prosecution case is that accused with the common intention of trafficking in fake currency notes, A4 gave the counterfeit notes to A3 and A3 handed over to A2 and A2 handed over to A1 and that A1 and A2 on 19-9-1991 reached Neendakara Fishing Harbour and the first accused gave a 100 rupee note to CW1/PW1as fee for the gate pass. PW1 got suspicious and the matter was intimated to PW4, the Sub Inspector who reached the place and A1 and A2 were taken into custody and on the information received from the above accused, the 3rd accused who was found standing near the place of occurrence was also arrested. On search of the person of A3, the police seized a 100 rupee note from his undergarments. A case was registered as Crime No.216/1991 under Section 489 B and 489 C read with Section 34 I.P.C. On information received from the 3rd accused, A4, the Sub Inspector, was arrested on 23-9-1991. PW5, the Detective Inspector took charge of investigation and obtained A4 from police custody and along with A4, PW5, the Detective Inspector, Counterfeit Detection Squad, conducted search in the wife house of A4 and seized 100 rupee

counterfeit note from the wife's house of A4. The counterfeit notes were sent to the Bank Note Press for expert opinion and received the finding that the same are counterfeit.

3. The defence version is that A1 is only a fish vendor and that he handed over a 10 rupee note for getting a pass to enter inside the fish lending centre. There was a quarrel with the bidder of fish. Hence, both of them, i.e. A1 and A2 were removed to the police station. The version of the 4th accused is that he is living with his wife's sister since 1985 and hence he has nothing to do with the wife's house.

4. The evidence adduced in the matter consisted of the testimony of Pws.1 to 6 and Exts.P1 to P6 and Mos.1 to 4, the counterfeit notes (MO.4 is a counterfeit note allegedly received by the counterfeit Detecting Squad from the Reserve Bank of India which was also sent for examination). Of Pws.1 to 6 examined, PW1 is the person employed to issue gate pass and PW2 is the then Assistant Engineer at Neendakara Fishing Harbour who allegedly witnessed the arrest of A1 and A2. PW3 is the Head Constable who accompanied PW5, the Detective

Inspector when he searched the wife's house of A4. PW4 is the Sub Inspector, Neendakara who arrested the accused. PW5 is the Detective Inspector who conducted the investigation and PW6 the successor Detective Inspector who filed the charge sheet. Ext.P1 is the mahazar of the counterfeit notes prepared by PW4 taking into custody at the spot of MO.1, 100 rupee note in which PW2, the Assistant Engineer is a witness. Ext.P2 is the search list proved by PW3, the Head Constable at the time the wife's house of A4 was searched by PW5, the Detective Inspector. Ext.P3 is the F.I.R. dated 19-9-1991 prepared and proved by PW4, the Sub Inspector. Ext.P4 is the property list prepared by PW5, the Detective Inspector of Mos.1 and 2, counterfeit notes, i.e. recovered from A1 and A3. The same has been produced before the court on 27-9-1991. Ext.P5 is the search memo prepared by PW5 and Ext.P6 is the expert opinion of the fake notes received from Bank Note Press at Dewas, Madhya Pradesh.

5. The trial court relied on the evidence of Pws.1 and 2 in order to establish the fact that A1 handed over MO.1 note to

PW1 and that A2 was along with him and also that A3 was arrested from near the spot. Of course, with respect to the handing over of MO.1 note by A1 the only direct evidence is that of PW1. PW2 came to the place on receiving intimation from PW1. Regarding the recovery of MO.4 currency note said to be on the basis of the search of the body of A3, the evidence is that of PW4, the Sub Inspector. Recovery of MO.2 currency note is mentioned only in the F.I.R. No separate mahazar has been prepared for the recovery of MO.2. So also no independent witness or other witnesses apart from PW4, the Sub Inspector was examined to prove the same. As already noted above, the Notes have been produced before the court only on 25-9-1991, i.e. after about six days. The recovery of MO.3 note from the house of A4 was effected on 26-9-1991 by PW5, the Detective Inspector. A4 was arrested on 19-1-1991 itself by PW4, the Sub Inspector.

6. As pointed out by counsel for the appellant there is something odd in the case of the prosecution that only one Note each has been recovered from A1, A3 and A4. The recovery

from A3 is not supported by any mahazar or the testimony of independent witnesses. So also the recovery allegedly as per the statement of A4 is not a recovery on the basis of Section 27 statement. It has also to be noted that the above recovery effected is much subsequent to the alleged date of arrest. Although the accused were arrested on 19-1-2001, the recovery from the wife house of A4 is effected on 26-9-1991 only. Only PW1 is the witness to the handing over of 100 Rupee Note by A1. There was nothing that inhibited PW4, the Sub Inspector, from making a proper search of the person of A3 and recovery of MO.2 100 Rupee Note. I find that the evidence with respect to the recovery from A3 and A4 is vague and scratchy. I find that the above accused are entitled for benefit of doubt and consequent acquittal.

7. There is nothing to show that A1 was in conscious possession of single 100 Rupee Note. As held by Supreme Court in **Umashanker** v. **State of Chattisgarh, 2001(3)K.L.T. 681(SC)**, conviction in the absence of necessary mens rea is bad. The provisions are not meant to punish unwary possessor

or user of fake Notes. Mens rea for offences under Sections 489-B and 489-C is "knowing or having reason to believe the currency notes or bank notes are forged or counterfeit". In the absence of evidence to the same, the rest is not sufficient enough to constitute the offences. In the circumstances, I find that A1 is also entitled to benefit of doubt.

In the result, the conviction and sentences of the appellants/accused 1,3 and 4 are herewith set aside. The accused are acquitted.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.A. 230 OF 2000
JUDGMENT

27-7-2007